In the

SUPREME COURT of the UNITED STATES

October Term, 1976

No. 76-558

RAYMOND MOTOR TRANSPORTATION, INC.,
a Minnesota Corporation
and
CONSOLIDATED FREIGHTWAYS CORPORATION
OF DELAWARE,
a Delaware Corporation,

Appellants,

vs.

ZEL S. RICE, ROBERT T. HUBER, JOSEPH SWEDA, REBECCA YOUNG, WAYNE VOLK, LEWIS V. VERSNIK, and BRONSON C. LA FOLLETTE,

Appellees.

On Appeal From The United States District Court
For The Western District of Wisconsin

REPLY BRIEF FOR THE APPELLANTS

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I. THE LEGAL ISSUES

The broad questions presented by this case are two:

"Does Wisconsin's refusal to permit twin trailers on the Interstate Highways in Wisconsin violate the Commerce Clause by placing a burden on interstate commerce which outweighs any legitimate local interest?"

"Does the Wisconsin regulatory scheme for vehicles unconstitutionally discriminate against interstate commerce?"

The resolution of the first question depends on two issues. The first is whether the standard of *Pike v. Bruce Church*, 397 U.S. 137 (1970) is applicable to a state regulation asserted to promote highway safety. The second issue is whether Wisconsin's ban promotes safety. Though the magnitude of the burden on interstate commerce is normally an issue under *Pike*, it is not seriously denied in this case.

The District Court found that Wisconsin's ban did promote safety. The conclusion was reached by applying an erroneous presumption irrebuttably linking vehicle size with safety and by making unsupported findings of fact contradicted by the record. (Appellant's Brief, pp. 39-43).

The discrimination question depends on two issues: whether Wisconsin's interplant permits are discriminatory and whether Wisconsin's entire regulatory scheme is discriminatory in its effects on interstate commerce. (Appellant's Brief, pp. 21-24, 47-49). Appellees have raised two subsidiary issues: whether the discriminations are justified, and whether appellants have standing to assert the discriminations.

The District Court found no discrimination in regard to the interplant permits on the basis of a general policy statement, which was specifically contradicted in the record. (Appellant's Brief, pp. 20-21). In regard to the effects of the regulatory scheme, the District Court found no discrimination. The Court further held that any discrimination would be justified by the safety differences previously found from the presumption that safety and size are linked. (Appellant's Brief, pp. 21-25, 43; 47-49).

A. PIKE v. BRUCE CHURCH IS THE APPROPRIATE STANDARD TO APPLY TO THIS CASE.

The primary issue in determining the constitutionality of the Wisconsin highway regulations is the legal standard to be applied. Appellants assert *Pike v. Bruce Church*, 397 U.S. 137 (1970) to be the appropriate standard.

> "Although the criteria for determining the validity of state statutes affecting interstate commerce have been variously stated, the general rule that emerges can be phrased as follows: Where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. *Huron Cement Co. v. Detroit*, 362 U.S. 440, 443. If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities." *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).

Appellees and Amici argue that *South Carolina Highway Department v. Barnwell Bros., Inc.*, 303 U.S. 177 (1938), is the proper standard, or in the alternative, that *Pike* should be modified by *Barnwell* and similar cases.

The suggested "modifications" are two. First, Appellees suggest that this Court should apply an irrebuttable presumption that regulation of the size of vehicles is, without exception, a regulation which promotes safety. Second, Appellees assert state legislative decisions in the area of highway safety to be immune from judicial review.

This Court enunciated *Pike* as a general statement of the criteria for applying the Commerce Clause to state regulations of commerce. *Pike* was an eloquent summarization of a long historical attempt to reconcile the powers of the national government and the state governments. It has been adhered to by this court repeatedly since its enunciation.[1] The Constitution itself does not distinguish between highway safety and other justifications for state legislation of commerce. Thus, if there is a reason for not applying *Pike* to regulation of motor transportation, the reason must be found in peculiarities of the field regulated which remove that field from the general sweep of the Constitution.

Barnwell posits such a peculiarity. Highways, it suggests, can never be a subject of national concern or regulation because "The conditions under which highways must be built in the several states, their construction and the demands made upon them, are not uniform." 303 U.S. 177 at 195.

Amicus Virginia artfully and cogently argues that the policy considerations underlying *Barnwell* are sound today. In undertaking to apply *Barnwell* to this case, however, Appellees and Amici face a difficult task. *Barnwell* holds that the policy reasons for local regulation of highways are so compelling that it is unnecessary to consider the burden placed on interstate commerce — the nation's interest in freedom of interstate commerce will always be outweighed by the state's need and interest in varying local regulation. *Barnwell* effectively forecloses any balancing of the policy considerations.

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[1] *Hunt v. Washington Apple Advertising Commission*, 53 L. Ed. 2d 383 (1977); *Great Atlantic and Pacific Tea Co. v. Cottrell*, 424 U.S. 366 (1976); *Hughes v. Alexandria Scrap Corp.*, 426 U.S. 794 (1976); *Allenberg Cotton Co., Inc. v. Pittman*, 419 U.S. 20 (1974)

The facts of this case, however, show the *Barnwell* assumption to be false. This case presents a situation where the policy considerations supporting local regulation are the weakest possible. Their weakness is sharply illustrated by the fact that no objection is raised to twin trailers based upon considerations peculiar to Wisconsin. If the principal policy consideration for local regulation is that of varying local conditions, that policy consideration would seem absent when the regulation cannot be supported by any local condition or characteristic.

The reason for this absence is apparent from the record. The highways which appellants seek permits to use are not local highways; they are Interstate Highways that form the principal channels of interstate motor transportation. Upon entering Wisconsin the Interstate Highways do not suddenly narrow or widen, their construction does not change, and their direction does not alter. Indeed, absent a sign proclaiming "Welcome" from the Governor, the user would not know that he had exited one state and entered another.

The policy considerations underlying local regulation are at their weakest in this case, but the policy considerations for freedom from the burden imposed by local regulation are at their strongest. Appellants are a part of a complex and sophisticated interstate transportation system for general commodities. They transport the goods of commerce between and through numerous states and routinely and regularly interchange equipment with other carriers in the system to provide nationwide service. Wisconsin's ban imposes cost burdens on the citizens of other states served by the system, disrupts the quality and availability of service in numerous states, and fragments and dislocates the transportation system. The nation's

interest in a free and unhindered national economy is most vulnerable in its indispensable need for rapid and efficient interstate transportation of goods. By damaging the ability of Appellants and others to smoothly and efficiently move the goods of commerce, Wisconsin's ban directly strikes at the national interest.

This case is exceptional because the particular facts create a case of extremes in terms of policy considerations. Because of the particular facts, it may be that this case, like that in *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520 (1959) is "one of those cases — few in number — where local safety measures . . . place an unconstitutional burden on interstate commerce." Those facts, however, are developed from general changes in the national economy, in methods of transportation, and in highway conditions. Those changes suggest that *Barnwell* itself is premised on assumptions that are now false.

Appellees and particularly Amicus Virginia suggest that abandonment of *Barnwell* will result in a loss of all state regulation of highways and the interposition of federal control. It will not result in exclusive federal control just as *Pike* has not resulted in exclusive federal control of the packing of cantaloupes. If state regulations are based on reason, as most are, and are not designed to promote one state's economy at the expense of another's, there will be no constitutional difficulty. If, as Amicus Virginia argues, local conditions require local regulation, *Pike* will permit such local regulation. *Pike* does not mandate the invalidity of local regulation, *Pike* merely requires that the needs of local regulation be measured against the needs of the nation.

The only plausible argument against the overruling of *Barnwell* is the possibility of increased litigation. The evidentiary standard placed on the plaintiff by *Pike*, however, makes frivolous litigation unlikely. The plaintiff must show a heavy burden on interstate commerce and must also prove the non-existence of any substantial legitimate local interest. Certainly the experience since *Pike* in other fields does not suggest that there will be greater litigation. Even if such were the result, the desire for avoidance of litigation of constitutional questions should not be permitted to impose a rule which cannot be constitutionally justified.

B. THE "PRESUMPTION" THAT EQUATES VEHICLE SIZE TO SAFETY CAN BE AND HAS BEEN REBUTTED.

The record in this case shows twin trailers to be safe. No statistical study, no officials of any state and no expert witness indicated or testified that twin trailers were less safe than semi-trailers. Faced with this rather bleak evidentiary record, Appellees and Amici suggest that no evidence is needed. A presumption will suffice:

> "It is clear that the precedent of this Court well establishes the rule that local regulation of size and weight of motor vehicles is directly related to safety and no evidence need be adduced on this point." Virginia Brief, p. 5

> "Early cases recognized that vehicle size affects safety and that excluding larger vehicles promotes safety. *Buck v. Kuykendall*, 267 U.S. 307 (1925); *Morris v. Duby*, 274 U.S. 135 (1927)." Appellees' Brief, p. 13.

It is questionable whether factual conclusions, made some fifty years ago, rise to the level of a presumption.

Even if we assume the presumption to exist, it is not irrebuttable:[2]

> "Presumptions are indulged to supply the place of facts; they are never allowed against ascertained and established facts. When these appear, presumptions disappear." *Lincoln v. French*, 105 U.S. 614, 618 (1882)

A presumption serves only to shift the burden of proof. In this case Appellants have met that burden by developing extensive evidence showing that sixty-five foot twin trailers are safer than fifty-five foot semi-trailers. That evidence is compelling, and it shifted the burden of going forward with the evidence to the Appellees. They could not meet that burden.

C. A STATE LEGISLATIVE DECISION AS TO THE ISSUE OF SAFETY IS SUBJECT TO JUDICIAL REVIEW.

Appellee and Amici suggest that highway safety is so paramount an interest that invocation of it immunizes state regulation from constitutional scrutiny under *Pike*. We concur that highway safety is a crucial and important justification for state regulation. Appellants are not callous creatures of profit who suggest that this Court should seriously doubt the balance between human lives and interstate commerce. Neither was this Court callous in

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[2] Irrebutable presumptions of fact do exist, but they are disfavored for the obvious reasons. If they are in fact irrebuttable, there is no need to make them legally so. If they are in fact rebuttable, then there must exist the strongest policy reasons for a legal system founded on reason to embrace a fiction. Commonly, they exist where the necessity of determination is great; but the ability of proof difficult, as for instance in the common law factual presumption that all female inheritors under a will are capable of having children. No such policy reason exists in the present case. The issue of safety is an issue susceptible of proof.

enunciating *Pike* as a general standard to be applied in cases where health and safety are raised. If, in fact, Wisconsin's regulatory scheme does "regulate evenhandedly to effectuate a legitimate local interest," such as safety, then, because of the primacy of the interest in human life, the regulation should be upheld under *Pike*'s standard. The question is not whether safety is a legitimate local concern, but whether Wisconsin's ban promotes safety.

In determining whether a state regulation promotes safety in the context of the Commerce Clause, this Court appears to have adopted a two stage test. If the issue is in doubt or the evidence is inconclusive, the Court will defer to the legislative judgment. *Brotherhood of Locomotive Firemen and Enginemen v. Chicago, Rock Island & Pacific R.R. Co.*, 393 U.S. 129 (1968). If the evidence, however, is reasonably conclusive, the Court may determine that ". . . the total effect of the law as a safety measure in reducing accidents and casualties is so slight or problematical as not to outweigh the national interest in keeping interstate commerce free from interferences which seriously impede it . . ." *Southern Pacific Co. v. Arizona*, 325 U.S. 761, 775-776 (1945); *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520 (1959). Such is the case here. Appellants have had the burden of producing evidence to show that Wisconsin's ban does not reasonably promote safety. They have done so. Appellees have been unable to introduce any evidence to the contrary.

II. SAFETY

In attempting to assert that the Wisconsin ban promotes safety, Amici and Appellees, in the absence of factual support, have raised a number of hypothetical con-

tentions. There is extensive evidence and testimony in the record disproving each contention raised.

Undiscussed by Amici and Appellees is the most conclusive evidence of all. The United States Department of Transportation and the California Highway Patrol have each conducted extensive studies on twin trailers in operation. Those studies show sixty-five foot twin trailers to have fewer accidents per mile of operation than fifty-five foot semi-trailers. (A. 41, 56-58).[3] The studies were conducted or supervised by neutral governmental bodies and their results have not been challenged. They are confirmed by a number of formal and informal state reviews or studies which are referred to by officials from Minnesota (A. 64-66), Kansas (A. 83), North Dakota (A. 155), South Dakota (A. 156-157), Montana (A. 158), Wyoming (A. 160), Idaho (A. 161-162), Oregon (A. 165), Michigan (A. 167) and Colorado (A. 168-169).

Appellees have offered no expert to testify and no study to show that twin trailers are less safe. Their own state officials declined to testify that twin trailers were less safe (see, e.g., A. 250). Indeed, the only Wisconsin official who stated that he had an opinion on twin trailers was James

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[3] In order to evaluate performance characteristics, Appellants and Defendants alike have compared twin trailer combinations to the 55-foot semi-trailers presently utilized in Wisconsin. This comparison is not done to denigrate the impressive safety record of semi-trailers, for as California Highway Patrol Commissioner A. S. Cooper testified:

> "Both are extremely safe vehicles and consistently among the vehicle types with the lowest accident rates. The accident rates for both doubles and semis are much lower than other trucks and the auto." (A. 62)

Nevertheless, the semi does provide a recognizable standard by which other vehicles can be compared (A. 114). The semi also represents a degree of operational safety clearly accepted in Wisconsin.

Karns, the former Wisconsin Motor Vehicle Commissioner. He testified that he had reviewed studies of twin trailers and had concluded that there was no safety reason to ban them, (A. 74-76).

Only the arguments of counsel have been offered to counter the evidence.

Braking Characteristics

This tendency to substitute the arguments of counsel for evidence is clearly illustrated in regard to braking. Amicus, the Association of American Railroads (hereinafter AAR) has argued that the braking capability of a fully loaded twin trailer would be less than that of a fully loaded semi; AAR Brief, p. 5. Amicus Virginia similarly contends that:

> ". . .[T]here is no evidence to reflect what weights the two types of trucks were carrying during the tests which appellants argue support their position. It is difficult to understand how a twin trailer carrying its average load is capable of being stopped as fast as a semi-trailer carrying its average load. The one-third additional weight in the twin trailer has to dictate a longer stopping distance." Virginia Brief, p. 27.

Contrary to Amicus Virginia's assertion, the weights of the test vehicles are in the record. In the tests conducted by the National Safety Council on ice and snow-covered surfaces the twin trailer vehicle's gross weight was 69,140 pounds, that of the semi-trailer type vehicle was 39,660 pounds (Exhibit 3, p. 4, Deposition of Archie Easton). In the California tests on dry roads the twin trailer vehicle weighed 75,240 pounds, the semi-trailer type weighed

43,270 pounds.[4] In both tests the twin trailers outperformed the semi-trailer type vehicles.

Though Amicus Virginia asserts that "it is difficult to understand" how this can be true, the reasons are in the record. The ability of a loaded twin trailer to stop in an equal or lesser distance than a loaded semi is the result of fundamental differences between twin trailer and semi-trailer equipment. Twin trailers have (1) a more even spacing of the trailer axles; (2) "fast air transmission valves" which allow for simultaneous application of all brakes; (3) a larger "footprint" of the truck tires on the road due to differences in axle distribution and load; (4) the ability to retain control while exerting maximum braking at the front axle; and (5) better stability while braking (A. 36, 61, 67, 96-97, 123-125). These factors combine to make a twin trailer's braking ability superior to that of

[4] The semi-trailer type vehicle was formed by removing the rear twin trailer weighing 31,970 pounds from a twin trailer combination weighing a total of 75,240 pounds (Exhibit 3, p. 4, Deposition of Fred J. Myers) The weights of 69,140 pounds and 75,000 pounds for the twin trailer vehicles in the two tests are well in excess of appellant Consolidated's average gross weight for loaded twin trailers of approximately 66,000 pounds (A. 323) and were in excess of Wisconsin's 73,000 pound gross weight limit at the time of trial. Wisconsin has since trial increased its gross weight limit to 80,000 pounds, Chapter 29, Laws of 1977, making still greater the difference between the average weight of twin trailers loaded with low density general commodity freight and the maximum weight allowed.

a semi-trailer, notwithstanding the weight differential cited by Amici.[5]

Psychological Impact

Amicus Virginia has hypothesized that:

> ". . . Because of their size, the twin trailer can intimidate and create a fear in the motorist. Such an intimidation can result in a motorist overreacting to emergencies or creating traffic congestion and its attendant hazards because of his uncertainty in approaching or passing such vehicles." Virginia Brief, p. 26; see also AAR Brief, p. 18.

If twin trailers caused an adverse "psychological impact" which resulted in accidents, the statistical studies should show greater twin trailer involvement in accidents. To the contrary, the statistics show 65-foot twin trailers to be less involved in accidents (A. 35, 41, 57-58, 83-84).

The testimony of various state officials also contradicts any "adverse psychological impact." Several of these officials testified directly as to motorist reaction:

[5] The California tests were conducted by the Western Highway Institute in conjunction with the National Highway Traffic Safety Administration and the California Highway Patrol for the purpose of ascertaining if existing twin trailers could meet the rigorous braking standards of new federal regulations for interstate carriers. Deputy Commissioner Cooper of the California State Highway Patrol testified that twin trailers more than meet the federal braking performance standards (A. 61, A. 106).

The enactment of braking standards by the federal government, 49 C.F.R. §571.121, prevents any state from enforcing stricter braking requirements; 15 U.S.C. §1392(d); *Boating Industry Assoc v. Boyd*, 409 F. 2d 408 (7th Cir. 1969). Thus, even if twin trailers did not possess superior braking characteristics, Wisconsin could not ban them on that basis alone since they meet the federal standards.

"The South Dakota Highway Patrol has not received any motorist complaints related to the twin trailer configuration of these trucks." Dennis Eisnach, Superintendent, South Dakota Highway Patrol (A. 157)

"During his five years as Permit Director, no citizen complaints whatsoever concerning double bottom trucks have been brought to his attention or filed with this office." Robert Hamilton, Permit Director, Oregon Highway Department (A. 165)

"It has been our experience as an enforcement agency that the twin trailer configuration, as well as the sixty-five foot length, has not caused a traffic or accident frequency problem with our state." Col. Fred Wickam, Director, Wyoming Highway Patrol (A. 160)

"A. I handled the safety educational program for the State [of Kansas]. I asked our people at these meetings, at some of the larger meetings, . . . [to] ask them [the public] if they have had any adverse effect of trying to pass or any adverse effect as far as they [twin trailers] were concerned . . . Now, we got no answers adverse but we got answers patting the twin units on the back. The operation of the twin units, they — (interrupted)
A. Now, this is a meeting where your people are talking to — (interrupted)
A. To just citizens' groups, like a Rotary Club or — (interrupted)"
(Deposition of Floyd McCamment, Retired Safety Director, Kansas State Highway Commission, p. 38)

Amici's hypothesis with respect to psychological effects has actually been tested and disproved. Mr. Peter Den—Hamer, Director of Safety and Engineering for Transport Indemnity Co., referred to a study once conducted on the New York Throughway immediately after the introduction of larger trucks. Observers at various toll booths polled had not noticed the larger trucks (Deposition of Peter DenHamer, p. 20). As Mr. DenHamer explained:

". . . [I]t is difficult for anybody to stand alongside or look at a combination or tractor and trailer and tell me if that is 55, 60 or 65 feet long." (Deposition of Peter DenHamer, pp. 20-21)

Assistant Commissioner Marshall of the Minnesota Department of Highways similarly testified:

"Q. How has the public reacted to twin trailers in Minnesota?
A. I think the general public in Minnesota is unaware, or cannot differentiate a twin trailer from a single semi rig. At least no one has complained to me about twin trailers on the highways." (Deposition of Francis Marshall, p. 10)

Passing

The evidence shows that, given a 10 m.p.h. speed differential, passing a twin trailer takes only two-thirds of a second longer than passing a 55-foot semi. (A. 62, 94, 116,144)[6]

The District Court and Appellees both assert this delay in passing to be the principal factual safety objection to twin trailers. They did so despite extensive expert testimony as to the significance of this delay. The District Court apparently failed to consider that the passing of twin trailers would only occur on four lane divided highways. All of the witnesses who testified as to the passing time uniformly agreed that this fraction of a second additional passing time is insignificant:

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[6] Since the date of trial, Wisconsin has raised the maximum length for semi-trailers, without permits, to 59 feet; Chapter 29, Laws of 1977; thereby reducing the passing time differential to four-tenths of a second: 60% of the previous time. Even if one were to assume a speed differential of only one mile per hour, the passing time would be increased by only four seconds.

Col. Crawford (Minnesota State Patrol) stated:

> "You're really only talking about ten feet, you know, difference, and the passing time for that ten feet is not that significant." (A. 69)

Commissioner Cooper (California Highway Patrol) stated:

> "Although passing time has not been measured by the California Highway Patrol, a study by the U.S. Department of Commerce [H.R. Doc. No. 354, 88th Cong., 2nd Sess. 93 (1964)] indicated that vehicles up to 75 feet would not have a significant effect upon the safety potential of the usual passing operations on a two-lane facility. As such, the time required to pass a 65-foot double would not create a more significant hazard than the time required to pass other trucks and buses." (A. 61)

Mr. Marshall (Minnesota Department of Highways) stated:

> "We are talking ten foot longer length trailer, or total combination, and in passing we are talking probably a second or so, and I don't think — we haven't heard any complaints from the people on anything in this respect." (A. 72)

Claud McCamment, (Retired Safety Director, Kansas State Highway Commission) stated:

> ". . .[W]e finally studied every section of the highway system over which they had sought approval, and there was some six thousand miles that were studied, and most of the sections that we studied had terrain that was hilly, was curvy, and we found that the units, the people were able to pass the [twin trailer] units, much to our amazement, without any great difficulty." (A. 81)

Moreover, since this lawsuit is concerned only with the Interstate Highway system which has at least two lanes in either direction so that a passing vehicle faces no oncoming traffic, the time difference carries even less significance.

Mr. Sherard (Chief Engineer, Western Highway Institute) testified:

> "Q. Do you have an opinion as to whether the additional 10 feet in length of a twin over the length of a semi, both operating on a four-lane divided highway, constitutes a safety hazard?
> A. I don't think it does.
> Q. That is your opnion?
> A. That is my opinion, that it doesn't. We are talking about an interstate highway?
> Q. Right.
> A. Four-lane divided highway?
> Q. Correct . . ." (A. 128)

Mr. Myers (Retired Chief Engineer, Western Highway Institute) stated:

> "I don't think it is of any importance on a multiple lane highway when the vehicles are traveling in the same direction." (A. 94)

Amici and Appellees assert that the additional passing time has added significance during inclement weather. Appellees state flatly: "The safety factors are obvious," Appellees' Brief, p. 13-14; see also Virginia's Brief, p. 27 and AAR Brief, p. 5.

The record indicates that it would be less hazardous to pass a twin trailer than a 55-foot semi-trailer in inclement weather. The 65-foot twin trailer puts out 20% *less splash*

and spray in a pattern that is *neither as high nor as wide* as that of a 55-foot semi-trailer. Moreover, the splash and spray of trucks is principally located at two points, the rear of the tractor and the rear of the truck.[7] Increasing the length of the vehicle thus does not lengthen the time a passing vehicle spends in the two areas of maximum density.

In tests conducted by the Western Highway Institute and Southwest Research Institute the splash and spray characteristics of various vehicles were compared. Those tests showed 65-foot twin trailers to have the best splash and spray characteristics of any of the vehicles tested.[8] The tests showed splash and spray from a twin trailer to be more limited in its spread so as to reduce the probability of its reaching a passing vehicle in an adjoining lane. The tests also showed splash and spray from a twin to be less likely to reach the windshield of a passing car because it was not lifted as high by vehicle generated air currents. Finally, the tests showed twin trailer splash and spray patterns to be less dense and thus to have less potential to obscure the vision of a passing driver (A. 109-120; Exhibits 2 and 3, Deposition of Thurman Sherard).

Two state officials, testifying as to actual experience with twin trailers, spontaneously mentioned the improved splash and spray characteristics of twin trailers:

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[7] Much of the increased splash and spray of semi-trailers is the result of the tandem axle arrangement, which creates turbulence and splash and spray as the adjacent wheels throw water into each other. Twin trailers do not have tandem axles (A. 113-120, Exhibit 2, Deposition of Thurman Sherard).

[8] Eleven vehicle types were tested. The worst three, a tank truck, auto transporter, and 55-foot semi-trailer, are all routinely allowed on Wisconsin highways. (A. 135; Exhibit 2, Deposition of Thurman Sherard).

> "We followed these units under all types of adverse weather conditions. The semi puts out a much greater spray than the twin trailers. Now, I am not a scientist, I don't know just why, but in our study we found that the twin trailers did not put out nearly as much spray and muck and stuff . . . as did the semi units . . ." Claud McCamment, Retired Safety Director, Kansas State Highway Commission (A. 84-85)

Assistant Minnesota Highway Commissioner Francis Marshall testified:

> "The greatest complaint we hear from passing commercial vehicles is the blow-out from the wheels of snow and rain causing poor visibility while you are passing, and I have observed on twin trailers . . . the two trailers seem to hold that blow-out in a little more." (A. 72-73)

The comments of Amici with respect to passing in inclement weather completely ignore the question of splash and spray patterns; Virginia Brief, p. 27; AAR Brief, p. 5.

The studies and independent observations of the splash and spray problem show an obvious benefit to the use of twin trailers, as opposed to tandem axle semis, on Interstate Highways.

Accident Severity

Amicus Virginia has argued:

> "[T]he weight of a vehicle has a direct bearing upon the severity of its impact potential in an accident." Virginia Brief, p. 26, see also AAR Brief, p.5.

Both Amici imply that collisions with twin trailers would be more severe than collisions with semi-trailers.

If this implication had merit, the accident statistics would show a consistently higher frequency of fatalities and injuries in accidents with twin trailers. To the contrary, statistics gathered by the U.S. Department of Transportation, comparing twin trailers and 55-foot semis in actual use by general commodity carriers over similar routes, show twin trailers to have consistently fewer injuries per accident, and to have fewer fatalities per accident in three of the five years surveyed (A. 41). The average of five years experience shows twin trailers had .075 fatalities/accident and .83 injuries/accident, as opposed to a rate of .079 fatalities/accident and .95 injuries/accident with 55-foot semi-trailers (A. 41).[9]

The laws of physics and the earlier discussion of braking explain why the accident severity statistics for twin trailers are better than those of semis: speed has far more effect than weight in an accident. The superior braking performance of twin trailers results in a slower speed at the point of impact, thereby lowering the speed component of the formula, and more than compensating for any additional weight. In a vivid example Professor Easton explained:

> "Q. Taking the example of the Volkswagen colliding with a twin-trailer, 65-feet in length, or a conventional unit in the configuration of a 2-S1, and assuming, in addition, a straight course braking similar to that in Table I of Exhibit No. 4, with the braking applied at the same distance from the Volkswagen in each case, would the energy at impact for the twin-trailer unit be less than for the . . . tractor semi-trailer unit?

[9] Twin trailers were also less frequently involved in accidents. On a five year average, twin trailers experienced .642 accidents per 1,000,000 miles traveled, as opposed to .862 accidents/million with semis (A. 41). Since each twin trailer carries more cargo per mile, a comparison of accident frequency based on cargo miles would be even more favorable to twin trailers.

> A. The energy at impact, assuming that the distance between the point where the vehicle started braking and the Volkswagen was less than 356 feet, the speed of the 2-S1-2 [twin trailer] at the time of impact would be less than that of the 2-S1 [semi-trailer]. Therefore, the damage potential would be less in the case of the 2-S1-2 [twin trailer].
>
> Q. And, of course, if the distance from the Volkswagen at the time of application were 360 feet, there would have been no collision in the case of the twin-trailer unit?
>
> A. There would have to be 356 feet. There would be no collision then." Deposition of Prof. Easton, pp. 22-23

While differences in weight between twin trailer loadings and semi-trailer loadings depend upon the carrier, Raymond indicates a weight increase of about 8000 pounds might be possible (A. 373). Consolidated Freightways' actual experience shows a weight differential of about 3,500 pounds (A. 323). Even using the larger weight differential, the additional kinetic energy generated is offset by less than a 3 mph speed reduction. In other words, a 58,000 pound semi-trailer traveling at 55 mph would have approximately the same impact as a 66,000 pound twin trailer traveling at 52 mph.[10]

[10] The kinetic energy of impact varies directly with the mass, but varies with the square of the velocity. Thus a small velocity change has much greater effect than a relatively large change in mass. The formula for calculation is Energy = ½ x Mass x (Velocity)² (A. 144, 126, Deposition of Leon Robertson, p. 16). Substitution of the appropriate figures shows a difference of about 3 mph in velocity offsets the 8,000 pound difference in mass between 58,000 and 66,000 pounds.

Other Safety Questions

The AAR has stated:

> "Various witnesses expressed opinions that 65-foot twin trailers are as safe as or safer than, 55-foot semi-trailer combinations (A. 52-53, 56-57, 64-65, 70-71,99, 141, 143, 157, 161-162, 169), but there was no evidence that they are as safe as 55-foot twin trailer combinations." AAR Brief, p. 5.

> ". . . [N]othing in Wisconsin's law prevents them from using twin trailer combinations having an overall length of 55 feet or less." AAR Brief, p. 32.

Both quotes are false.

Wisconsin Admin. Code §Hy 30.14(3)(a), the administrative regulation challenged here, forbids general commodity carriers the use of twin trailers of *any* length.

In the first quote, the AAR has overlooked the evidence of Ernest Cox, former Deputy Director, Bureau of Motor Carrier Safety, United States Department of Transportation (A. 50-52). Mr. Cox explained that the ICC does not permit explosives to be carried in twin trailers less than 65 feet long because, such shorter twin trailers ". . . had displayed instability . . ." and, in Mr. Cox's judgement, ". . . there had not been sufficient demonstration that they would operate in a sufficiently stable manner and track adequately to avoid mishaps . . ." Mr. Cox added that these drawbacks did not occur with the 65-foot twin trailer. (A. 50-52).

Beyond the factual and legal contradictions of Amicus' assertions, Amicus has simply missed the point. Sixty-five feet is not a size selected at random by the Appellants.

Sixty-five foot twin trailers are the the industry standard for carriage of general commodity freight. (A. 324) This standard is recognized by the American Association of State Highway and Transportation Officials, which, in its current policy statement, recommends that all states adopt length limitations allowing 65-foot twin trailers (A. 107-108).

Wisconsin's Ban Actually Detracts From Safety

In all of their discussions of safety, Appellees and Amici have avoided the issue of traffic reduction as it relates to safety. At present, because of the ban, general commodity carriers operate twin trailers through Wisconsin as two separate units, divert traffic around Wisconsin thereby increasing the total miles traveled, and operate semi-trailers thereby increasing the number of vehicles for a given amount of cargo. These alternatives increase the safety hazard by increasing the number of vehicles and the number of miles of operation.

The facts are closely analogous to that in *Southern Pacific v. Arizona, supra*. There the Court concluded that there was no increase in frequency of accidents or accident severity because of an increase in the length of a train. Moreover, the decrease in the number of trains would have reduced accident exposure:

> "As the trial court found, reduction of the length of trains also tends to increase the number of accidents because of the increase in the number of trains. The application of the Arizona law compelled appellant to operate 30.08% or 4,304, more

freight trains in 1938 than would otherwise have been necessary. And the record amply supports the trial court's conclusion that the frequency of accidents is closely related to the number of trains run." *Southern Pacific Co. v. Arizona*, 325 U.S. 761,777 (1945).

The record discloses in this case that Appellant Raymond Transportation must make approximately 33% or 1,560 more trips annually because of the Wisconsin ban.[11] (A. 374) Appellant Consolidated Freightways increased operations are more difficult to state precisely because of its diversions through Missouri and use of the shuttle operation. At a minimum the shuttle operation doubles the number of vehicles and mileage through Wisconsin, if the east-west and west-east flow is balanced so as not to require runs of tractors without trailers. The added mileage due to shuttle runs is 1,226,620 miles annually.[12] From June, 1974 through June of 1975, there were a total of 13,624 runs diverted through Missouri, totalling 2,702,178 additional miles of operation.[13] The use of semi-trailers on routes, such as Detroit to Minneapolis, where twin trailers would normally be used, adds 209,514 miles of operation. The operating statistics of twin trailers

[11] Actual reductions would be somewhat less because on "some occasions" semi-trailers would still be used for articles longer than 27 feet and on "rare occasions" for extremely dense freight (A. 374).

[12] Exhibit REW-A, p. 2, Deposition of R.E. Wrightson.

[13] Page 1, Schedule REW-D of Deposition of R.E. Wrightson. The figures on the schedule are estimates derived by dividing total cargo movement by average load. The number of schedule trips (6,812) given on the exhibit is for one-way traffic, and would be doubled for a total figure.

for 1973 in the U.S. Department of Transportation study (A. 41) would indicate that the additional 4,138,312 operating miles caused by Wisconsin's ban will result in 3.14 additional accidents each year *for Appellant Consolidated Freightways alone*. Other general commodity carriers have a similar increase in their accident exposure (A. 379).

As is indicated by the mileage figures for diversions through Missouri, many of these accidents resulting from Wisconsin's ban occur in states other than Wisconsin.

III. BURDEN

Appellees and Amici have largely avoided discussing the burden on interstate commerce imposed by Wisconsin's ban. That burden is great in magnitude — the cost to Appellants alone exceeds $2,000,000 annually — but more pertinent is the nature and character of that burden. Wisconsin's ban disrupts a nationwide transportation system.

Because the transportation system is national, Wisconsin's disruption of that system affects the commerce and citizens of other states. Because rates are set on a regional basis, citizens of other states pay the direct financial costs of Wisconsin's ban even on shipments which have no relation to Wisconsin (A. 351-359). Equally important are the intangible losses caused by reductions in the quality, timeliness and availability of transportation over the entire length of I-90 and I-94 from Detroit to Seattle (Appellant's Brief, pp. 27-34, A. 307-314).

Wisconsin directly imposes on other states by increasing traffic within those states through diversion of Wisconsin

traffic (A. 313), the forced use of semi-trailers in other states (A. 311), and the operation of staging areas in Illinois and Minnesota for the shuttling of twins through Wisconsin (A. 308-311)[14].

It is this extraterritorial effect which this Court found to be particularly objectionable in *Southern Pacific Co. v. Arizona, supra:*

> "If one state may regulate train lengths, so may all the others, and they need not prescribe the same maximum limitation. The practical effect of such regulation is to control train operations beyond the boundaries of the state exacting it because of the necessity of breaking up and reassembling long trains at the nearest terminal points before entering and after leaving the regulating state. The serious impediment to the free flow of commerce by the local regulation of train lengths and the practical necessity that such regulation, if any, must be prescribed by a single body having a nation-wide authority are apparent."
> 325 U.S. 761, at 775.

Appellees' only comment on the burden is to suggest that it is different from that in *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520 (1959) because "interlining" is not interferred with. "Interlining", or more properly, "interchanging", is the process of transferring equipment between carriers to permit service beyond the routes of an individual carrier.[15] It is a common process. In 1974, 35.7% of Appellant Consolidated's shipments were interchanged or interlined with other carriers. (A. 322)

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[14] Additionally, the inefficiencies created by Wisconsin's ban results in unnecessary losses of national energy resources (A. 183-184, 279-286).

[15] "Interlining" properly refers to a transfer of cargo to another carrier for transportation in his equipment. In *Bibb v. Navajo Freight Lines, Inc., supra,* this Court used the term "interline" where "interchange" would now be the appropriate term.

In *Bibb* interchanging would have required substitution of mudflaps. Wisconsin's twin trailer ban imposes a greater obstacle to interchanging. The tractor equipment for semi-trailers and twin trailers is not compatible. (A. 311-312, 344-345, 375). Wisconsin's ban requires carriers going to, from or through Wisconsin to maintain semi-trailer equipment.[16] They cannot interchange the trailer of the semi unit with a carrier who operates outside of Wisconsin and may have available only tractors for twin trailer units, and they cannot interchange a trailer of a twin trailer unit with a carrier who may only have available tractors for semi-trailer units. Thus equipment incompatibility interferes with interchanging between carriers (A. 344-349, 368-372, 380).[17]

IV. THE ISSUE OF "BALANCING" VARIOUS MODES OF TRANSPORTATION IS NOT BEFORE THIS COURT.

Amicus Virginia has asserted that Wisconsin's ban is justified because a state may legitimately place restrictions upon one mode of transportation, such as trucks, in order to promote another mode, such as railroads.

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[16] It would be possible to maintain just twin trailer equipment, always operating it in Wisconsin in single tractor - single trailer units. The economics of such inefficient operation, however, dictates some use of fifty-five foot semi-trailer equipment (A. 311, 371-373).

[17] It also interferes with interchangeability of equipment within a single carrier (A. 344-345). Appellant Raymond Motor Transportation, whose sole contact with Wisconsin is the movement of goods between Illinois and Minnesota, must maintain a large fleet of incompatible semi-trailer equipment and attempt to coordinate use of that equipment with the twin trailer equipment it uses in Illinois, Minnesota, and North Dakota (A. 268-372, 380).

That justification is not, however, at issue in this case. Wisconsin has denied that it has any *justification or reason for its ban other than safety.*[18]

Even were the matter at issue, the record fails to support the argument. General commodity carriers, such as Appellants, carry small units of cargo — in 1974, 98.4% of Appellant Consolidated's shipments were under 10,000 pounds (A. 318). There is no real competition for these less than carload shipments. As was observed by one witness:

> "Many of these [small] communities have been long abandoned by the railroads, and it should also be noted that the railroads, for the most part, no longer accept less than carload shipments." Arnold Foslien (A. 362).

Mr. Robert E. Hemphill of the Federal Energy Administration in discussing the impact of general use of twin trailers in Wisconsin stated:

> "Although rail freight is generally less energy intensive in areas with flat terrain such as Wisconsin, it is doubtful that the introduction of twin-trailers in one additional state in the region will greatly influence modal choice of long distance freight and shift traffic from the railroads." (A. 285)

[18] In a Pretrial Conference Order the District Court ordered the Appellees to amend their answer, stating therein ". . . every justification for the challenged regulation . . ." (A. 25). Appellees responded in an amended answer stating the sole justification to be safety. (A. 27-29)

Thus use of twin trailers through Wisconsin by general commodity carriers will not significantly affect railroads.[19]

The AAR makes the novel argument that this court in construing the Constitution must protect railroads from competition (AAR Brief, pp. 8, 41-42). No constitutional provision exists requiring that the *status quo* of competition between methods of transportation must be maintained. Certainly the proposition is not one that this Court has ever followed in holding a burden on interstate commerce unconstitutional, e.g. *Southern Pacific Co. v. Arizona*, 325 U.S. 761 (1945); *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520 (1959).

[19] The AAR fabricates an argument for railroads being affected by this case. The argument relies on misrepresentations of facts both within and without the record:

Amicus states its members had gross intrastate operating revenues in Wisconsin of about $291 million (AAR Motion, p. 2). The actual figure, according to the sworn statements of the railroads filed with the Wisconsin Public Service Commission is slightly over $24 million, see Appendix A.

Amicus AAR gives the source for its figures on net return on worth for railroads as the *Citibank Monthly Newsletter, April, 1977.* (AAR Brief, p. 8, f.n. 3) The actual source is the AAR, see Appendix B, f.n.(f).

Amicus cites Robert E. Hemphill as support for their argument that twin trailers would cause railroads competitive damage (AAR Brief, p. 8) Mr. Hemphill actually said ". . . it is doubtful that the introduction of twin-trailers . . . will . . . shift traffic from the railroads." (A. 285)

Amicus compares railroads and motor carriers based on return upon net worth — an inappropriate comparison given the differences in capital requirements of the two industries. Phillips, The Economics of Regulation (Irwin, 1969) pp. 271-275; *In re Middle West General Increases*, 48 M.C.C. 541, 552-53 (I.C.C., 1948).

V. THE INACTION OF CONGRESS DOES NOT ALTER THE TEST TO BE APPLIED IN THIS CASE.

Amicus the Association of American Railroads has included in its brief much material relating to Congressional debates on limitations on truck sizes and weights. Lost in that mass of material is the simple, salient, and pertinent fact: *Congress has never enacted legislation concerning the length of trucks on Interstate Highways.* Congress has placed limitations on the width and weight of trucks, 23 U.S.C. §127, but Congress remains silent on length limitation.[20]

Amicus suggests that the comments of individual senators are appropriate to determine what this silence means. Comments of individual legislators are, however, not competent evidence to show the intent of Congress.

> "By repeated decisions of this court it has come to be well established that the debates in Congress expressive of the views and motives of individual members are not a safe guide, and hence may not be resorted to, in ascertaining the meaning and purpose of the lawmaking body. *Duplex Printing Press Co. v. Deering*, 254 U.S. 443, 474 (1921).[21]

[20] Weight and width of motor vehicles require uniformity in order to permit uniformity of design and construction of Interstate Highways, as well as avoiding premature wear of the Highways. Length of vehicles is not a similar factor in highway design or maintenance.

[21] Amicus repeatedly quotes Senators Gore and Kerr in support of its views. Though a sponsor's comments may be used to discern the meaning of a statute, the rule would not appear applicable to proposed legislation which failed to pass or even to the sponsor of the amendment removing the proposed section in question from the final bill.

Interpreting the silence of Congress is a difficult proposition. Congress' silence may express a willingness for the states to regulate individually, limited only by the general prohibitions of the Commerce clause, or it may express a desire that the matter be left free from regulation entirely.[22]

The situation presented by this case is precisely the situation that confronted the Court in *Southern Pacific Co. v. Arizona*, 325 U.S. 761 (1945). There Congress had enacted a number of laws regulating trains, had had before it legislation to establish a maximum limit on train length, but had declined to act. Chief Justice Stone analyzed the meaning of Congress' refusal to act and the application of the Commerce Clause in its absence:

> "For a hundred years it has been accepted constitutional doctrine that the commerce clause, without the aid of Congressional legislation, thus affords some protection from state legislation inimical to the national commerce, and that in such cases, where Congress has not acted, this Court, and not the state legislature, is under the commerce clause the final arbiter of the competing demands of state and national interests.
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> . . . [I]n general Congress has left it to the courts to formulate the rules thus interpreting the commerce clause in its application, doubtless because it has appreciated the destructive consequences to the commerce of the nation if their protection were withdrawn, and has been aware that in their application state laws will not be invalidated without the support of relevant factual material which will "afford a sure basis" for an

[22] Mr. Thomas Reed Powell, former counsel for the Association of American Railroads, considered the difficulty of interpreting congressional silence in a delightful article, "The Still Small Voice of the Commerce Clause." 3 Selected Essays on Constitutional Law 931 (1938).

informed judgment. Meanwhile, Congress has accommodated its legislation, as have the states, to these rules as an established feature of our constitutional system. There has thus been left to the states wide scope for the regulation of matters of local state concern, even though it in some measure affects the commerce, provided it does not materially restrict the free flow of commerce across state lines, or interfere with it in matters with respect to which uniformity of regulation is of predominant national concern." 325 U.S. 761, 769-770 (citations omitted).

VI. DISCRIMINATION

Appellees and Amici have responded to the showing of discrimination in the record in three fashions. They have somewhat ingenuously argued that it does not exist; they have argued that the discrimination is justified for various reasons; and they have argued that Appellants have no standing to raise the issue.

A. DISCRIMINATION EXISTS IN WISCONSIN'S REGULATORY SCHEME.

The record indicates that Wisconsin's regulatory scheme discriminates against interstate commerce in two ways. First, it blatantly discriminates by granting Wisconsin industries and their agent motor carriers an exemption from the size limits "in connection with interplant, and from plant to state line, operations in this state". Wis. Stats. §348.27(4) (1975). Appellees assert that these interplant permits are not discriminatory because shipments from Wisconsin industries to the state line are, in fact, interstate shipments. Clearly discrimination exists whenever the state exempts its own trade from burdens while imposing those burdens upon trade from other states, *Hunt v. Washington Apple Advertising Commission*, 53 L. Ed. 2d 383, 399 (1977).

Second, the regulatory scheme discriminates by exempting from regulation industries and commerce important to Wisconsin while retaining the general limits on commerce not significant to Wisconsin. That discrimination is subtle, apparent only in its effect rather than from the face of the statute. But it is of significance in the context of the Commerce Clause; for, if permissible, it removes an internal political check on state action:

> "The present regulations, or any others of like purpose, if they are to accomplish their end, must be applied alike to interstate and intrastate traffic both moving in large volume over the highways. The fact that they affect alike shippers in interstate and intrastate commerce in large number within as well as without the state is a safeguard against their abuse." *South Carolina State Highway Department v. Barnwell Bros., Inc.*, 303 U.S. 177, 187 (1938).

If a state may respond to its own interests separately from those of the nation, *Barnwell's* political check will not work. Wisconsin will satisfy its domestic interests, such as paper, agricultural machinery manufacturing, automobile manufacturing, and milk production, thereby relieving domestic political pressure, without being required to respond to the needs of interstate commerce.

Neither Appellees nor Amici have denied the existence of the exemptions for industries important to Wisconsin. Instead, they argue there is no discrimination because these exemptions are available to residents and nonresidents alike.

Discrimination, however, need not exist on the face of the statute; it is the effect which is at issue, *Hunt v. Washington Apple Advertising Commission*, 53 L. Ed. 2d 383 (1977), *Dean Milk Co. v. City of Madison*, 340 U.S. 349

(1951); *Best & Co. v. Maxwell*, 311 U.S. 454 (1940); *Baldwin v. G.A.F. Seely, Inc.*, 294 U.S. 511 (1935); *Minnesota v. Barber*, 136 U.S. 313 (1890). The effect of Wisconsin's exemptions is to apply limits to commerce generally while exempting those aspects of commerce important to the State.[23] The discrimination is not "artlessly disclosed" but its *practical effect* is to burden interstate commerce while removing that burden from local commerce.

B. NO JUSTIFICATION EXISTS FOR WISCONSIN'S DISCRIMINATION.

Appellee and Amici have argued that many of Wisconsin's exemptions are justified by necessity, by limited use of the highways or by special conditions. We agree. The state may permit occasional uses of its highways by oversized vehicles such as farm combines, or vehicles carrying oversized indivisible articles such as telephone poles or bridge girders. Necessity and infrequency of use are valid justifications for discrimination.

[23] The general discriminatory pattern is illustrated at Footnote 30 of Apellant's brief. An example of the responsiveness of the State to its own economic interests is in the record (A. 210-212). Wisconsin has created an exemption, Wis. Admin. Code §Hy 30.14(3)(a), which permits a Wisconsin manufacturer of twin trailers to operate empty twin trailers, *in combination*, on two lane and Interstate Highways in Wisconsin, see also, f.n. 28, *infra*.

But Wisconsin goes much farther. No justification of necessity or limited use exists for the exemption for sixty-five foot automobile carriers,[24] the interplant exception,[25] the general exemption for tie logs and slabs,[26] the broad exemption for agricultural implements,[27] the exemption for forest products[28] or the exemption for twin trailer dairy trucks.[29] All of these are physically divisible loads and all make frequent and regular use of the highways.

[24] Wis. Stats. §348.27(5).

[25] Wis. Stats. §348.27(4).

[26] Wis. Stats. §348.05(2)(k).

[27] The broad agricultural exemption, Wis Stat. §348.25(4)(b) should not be confused with a narrow exemption for husbandry implements designed to permit farmers to temporarily operate machinery on the highway, Wis. Stat. §348.07(2)(e). §348.25(4)(b) permits agricultural machinery manufacturers to ship their products in vehicles five feet longer than the general limit.

[28] Wis. Stats. §348.27(5). Note that this exemption does not require individual "peeled or unpeeled forest products" to be oversize. This exemption is the direct result of the Highway Commission denying a permit for oversized loads of logs to a Wisconsin chipboard manufacturer. In denying the permit, the Highway Commission suggested he seek legislative relief (Exhibit 19, Deposition of Wayne Volk, p. 41). His state legislator then introduced the bill to amend §348.27(5) by including this exemption, *Wis. Legis. Bulletin-Senate* Dec. 11, 1976, Senate Bill 34, p. 51. The exemption permits paper manufacturers to haul pulpwood in oversized trucks.

[29] Wis. Admin. Code §Hy 30.18(3)(a), §30.01(3).

Amicus argues that many of these uses are limited by special restrictions whereas Appellants seek "unhampered" use of their twin trailers, Virginia Brief, p. 32-33. Reference to Exhibit B of the Complaint will show that similar special restrictions would be applied to Appellants' operations.[30] Amicus somewhat lamely contends that these exemptions are limited in use, e.g.:

> "First, the vehicles can be operated only temporarily or infrequently upon the highway. Second, even though highway use may not be infrequent, the average haul tends to be for relatively short distances. For example, an industrial interplant permit was issued to American Motors to carry car bodies in trucks for a distance of forty-five miles." Virginia Brief, p.31-32.

Neither argument is true. In regard to the American Motors permit the testimony was that 22 tractors and 21 trailers are operated continuously on a "round robin" basis every weekday. (Deposition of Wayne Volk, p. 66). Nor are permits limited to short distances. Carver Boat Co. for instance, possesses an interplant permit allowing it to transport small boats from Pulaski, Wisconsin (near Green Bay) to the Michigan, Minnesota and Illinois borders. (A. 232-234). The only limitation of distance is that of the geographic location of the permittee and the size of Wisconsin.

Amicus Virginia similarly confuses Wisconsin law in its discussion of other permits. It asserts the permit for oversized implements of husbandry to be permissible be-

[30] Wisconsin would apply basically the same restrictions to Appellant's twin trailer operations as to other permitted uses, Wis. Admin. Code §30.14(5). Appellants requested waiver of certain restrictions, e.g. restrictions on time of operation. The Highway Commission does on occasion waive some of its special restrictions (Deposition of Wayne Volk, pp. 10-11).

cause of limited use, but does not address the far broader manufacturers' exemption for up to two implements on a vehicle five feet longer than the general limit, Wis. Stats. 348.25(4)(b).[31] Amicus asserts the reasonableness of the seasonal operation of forest product vehicles over frozen roads, but does not address the general permit for peeled and unpeeled forest products in Wis. Stats. §348.25(5). Amicus asserts the obvious reasonableness of overweight dairy permits during an energy emergency, but does not address the twin trailer exemption for milk, Wis. Admin. Code §§ Hy. 30.18(3)(a), 30.01(3). Amicus brazenly asserts that the permit for sixty-five foot auto carriers is one of necessity.[32]

Finally Amicus reasserts that Wisconsin does not permit oversize permits for vehicles and loads "which cannot reasonably be divided, or reduced to comply with statutory size, weight, or load limits". The administrative interpretation of that clause is in the record (A. 194-195, 200, 202-204, 210-212, 215-216, 258-261) and shows that the Highway Commission interprets "reasonably divided" in an economic sense. Beer cans, car bodies, car frames, and small boats are examples of loads for which the Highway Commission has granted overlength permits notwithstanding the "reasonably divided" restriction. (A. 194-195, 228-232, 259-260, 199-200, 205, 232-234).

The total numbers and use of the permits granted under the regulatory scheme further belies any argument of limited use of rare exception. In 1975 there were a total of 3,077 permits for oversized automobile carriers. (A. 179)

[31] See f.n. 27, supra.

[32] Aside from the obvious divisibility of the load, Virginia itself does not permit sixty-five foot auto carriers, §46.1-330 Code of Va. (1950).

Under this type of permit a single auto carrier company operated 6,376,305 miles in Wisconsin in 1975, principally with 65 foot semi-trailer vehicles (A. 275). There were a total of 12,268 permits in 1975 which were "general annual permits", unlimited as to amount of use (A. 180; 253-254).[32] Over a three year period the total number of general annual permits and annual vehicle transportation permits equalled 40,582 (A. 179, 180). Certainly these figures — for permits unlimited as to mileage or number of trips — suggest something more than occasional and limited use of the highways.

Appellees have asserted an additional justification. Wisconsin, Appellees argue, may exercise its police power to promote certain local industries (Appelees Brief, p. 6, 7). Whether or not the state may promote one local economic interest over another is irrelevant. The effect of Wisconsin's regulatory scheme is to favor local economic interests over the interests of interstate commerce, when there is no distinction between the two in terms of frequency of use, safety, or road wear.[33] The mere invocation of the police power will not legitimize a regulation which discriminates against interstate commerce:

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[32] Additionally in 1975 there were 1,915 annual mobile home permits and 5,818 single trip permits, limited as to use (A. 178, 181).

[33] Though the highway cases cited by Appellees contain language suggesting that the promotion of local interests is a valid criterion for discrimination, each highway case also shows that the court discerned differences in safety or road wear between the exempt and non-exempt classes. *Wisconsin Truck Owners Asso. v. Public Service Commission*, 207 Wis. 664, 674, 242 N.W. 668 (1932); *State v. Wetzel*, 208 Wis. 603, 611, 243 N.W. 768 (1932). The holding in *Oregon v. Pyle*, 226 Ore. 485, 360 P. 2d 626 (1961) was specifically limited by the Idaho Supreme Court to its alternative grounds of use of unpaved roads and difficulty in weighing log trucks in a later Idaho case, *Sterling H. Nelson & Sons, Inc. v. Bender*, 520 P. 2d 860 (1974).

> "By the same token, however, a finding that state legislation furthers matters of legitimate local concern, even in the health and consumer protection areas, does not end and the inquiry. Such a view, we have noted, 'would mean that the Commerce Clause of itself imposes no limitations on state action . . . save for the rare instance where a State artlessly discloses an avowed purpose to discriminate against interstate goods.' *Dean Milk Co. v. Madison*, 340 U.S. 349, 354, 95 L. Ed. 329, 71 S. Ct. 295, (1951)." *Hunt v. Washington Apple Advertising Comm.*, 53 L. Ed. 28, 383, 398-399 (1977)

C. PLAINTIFFS HAVE STANDING TO RAISE THE ISSUE OF DISCRIMINATION.

In regard to Wisconsin's blatant discrimination in its interplant permits, the principal argument of Appellees and Amici is that Appellants lack standing to raise the issue. Only, Appellees argue, if Appellants were non-Wisconsin *industries* could they raise the issue of discrimination. The statute, however, defines the favored class as Wisconsin industries and their *agent motor carriers*. Appellants are the agent motor carriers for a number of foreign industries shipping to and through Wisconsin and thus possess direct standing to raise the issue, (A. 315, 378).

Even were this not the case, Appellants would still have standing. Interplant permits are but one part of a complex scheme of exemptions which result in Wisconsin commerce being freed from the burdens of the regulatory scheme, while imposing those burdens on interstate commerce. That scheme has the effect of burdening Appellants' interstate operations, and they thereby possess standing to raise the issue of discrimination.

VII. THE RELIEF REQUESTED BY APPELLANTS

Amici have engaged in the device of misstating the relief requested in order to provide a basis for their arguments. The most egregious offender is the Association of American Railroads:

> 'Moreover, Appellants in effect are requesting this Court to overrule its many prior decisions establishing the primary right of the individual States to regulate the maximum size and weight of motor vehicles operating on their highways, and to interpret the Constitution as authorizing the courts to establish uniform federal maxima in regard to interstate highways, limited only if at all by the highest maximum established by any State." AAR brief, p. 7.[34]

Amicus Virginia also mischaracterizes the requested relief:

> "At a minimum what the Appellants request is an absolute and unhampered grant to transport their trailers upon the Interstate Highways and connecting roads throughout the State." Virginia brief, p. 33.

Appellants' sole requested relief is that Appellees grant a permit to Appellants to operate the standard 65-foot twin trailer through Wisconsin on the specified Interstate Highways, I-90, I-94, and I-894 from the Illinois border to the Minnesota border. In addition Consolidated Freightways has requested in its permit consent to operate from its terminals in Madison and Milwaukee to the Interstate Highways over distances of approximately four miles and

[34] Amicus AAR repeatedly, as in the quoted section, uses the term "interstate highways" rather than Interstate Highways, for the purpose of implying the relief to be far greater than that requested.

one mile respectively, all of the route being on four-lane divided highways, (Complaint, Exhibit B). Those permits would be subject to a number of limits, including proof of extra insurance coverage, special lighting requirements, and the power of the Commission to suspend the permit for cause or during an emergency.[35]

Appellees and Amici appear to have assumed that, if this Court applies the *Pike v. Bruce Church* standard to highways, or finds discrimination, the result will be the total collapse of state highway regulations. Such is a misapprehension. Many of the facts in this case are unusual:

1. Appellees can show no safety justification for the ban. There is conclusive evidence showing twin trailers to be safe.

2. The equipment banned is of peculiar importance to interstate general commodity carriers because of their need for equipment standardization and their type of operation. Thus, Wisconsin's ban disrupts a national transportation system.

3. The only highways at issue are Interstate Highways which are uniform in design and construction.

4. Wisconsin's geographic location on a principal East-West route of interstate commerce, results in severe extraterritorial effects and increases the severity of the burden on interstate commerce.

[35] By operation of law, permits such as those Appellants requested contain a large number of restrictions on operations, Wis. Admin. Code §Hy 30.14(5), incorporating Hy 30.01(3)(e) 1, 3, 4, 5, 8, 9, 10, 11, 12, 17, 20, 22, 23, 24, 25, 26, 27, and 30. Appellants requested waiver of certain of these provisions (Complaint, Exhibit B).

5. Wisconsin exempts many of its economic interests from its regulation.

The summation of these factors makes Wisconsin's ban unconstitutional.

A finding that Wisconsin's ban is in violation of the Constitution will not eliminate state regulation of motor vehicle sizes and weights. It will merely require that the state regulation be for a legitimate local purpose, that it not impose an undue burden on interstate commerce, and that it not discriminate. Most state vehicle regulations can easily meet those requirements.

If those requirements are not applied to state motor vehicle regulations, the result will be the loss to the national economy of the potential of rapid and inexpensive interstate motor transportation and the growth of destructive competitions and economic restrictions among the states. It would be a denial of the very purpose for which the Commerce Clause was drafted:

> "The desire of the Forefathers to federalize regulation of foreign and interstate commerce stands in sharp contract to their jealous preservation of the state's power over its internal affairs. No other federal power was so universally assumed to be necessary, no other state power was so readily relinquished . . . The states were quite content with their several and diverse controls over most matters but, as Madison has indicated, 'want of a general power over Commerce led to an exercise of this power separately, by the States, which not only proved abortive, but engendered rival, conflicting and angry regulations.' 3 Ferrand, Records of the Federal Convention 547." *H. P. Hood & Sons v. DuMond*, 336 U.S. 525, 533-534 (1949).

Equally, it would be a denial of two hundred years of this Court's protection of the national interest in free and unhindered interstate commerce.

> "While the Constitution vests in Congress the power to regulate commerce among the states, it does not say what the states may or may not do in the absence of congressional action, nor how to draw the line between what is and what is not commerce among the states. Perhaps even more than by interpretation of its written word, this Court has advanced the solidarity and prosperity of this Nation by the meaning it has given to these great silences of the Constitution." *H. P. Hood & Sons v. DuMond*, 336 U.S. 525, 534-535 (1949).

Respectfully submitted,

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APPENDIX A

1A

BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

STATE OF WISCONSIN)
) SS
PUBLIC SERVICE COMMISSION)

I, Lewis T. Mittness, Executive Secretary of the Public Service Commission of Wisconsin and legal custodian of the official records of said Commission, do hereby certify under my signature and official seal of the Commission that the pages of Xerox copy of the documents hereto attached have been compared by me with the original on file in this Commission and that the same are true copies thereof, and of the whole of such originals.

Dated at Madison, Wisconsin

August 29, 1977

Executive Secretary

REPORT TO THE PUBLIC SERVICE COMMISSION OF WISCONSIN
BY THE BURLINGTON NORTHERN INC.

OF

ITS GROSS OPERATING REVENUES DERIVED FROM INTRASTATE OPERATIONS IN THE STATE OF WISCONSIN FOR THE CALENDAR YEAR 1975

Acct. No.	Class of Operating Revenue	Amount
101*	Freight	$99,205.00
102	Passenger	
103	Baggage	
104	Sleeping Car	
105	Parlor and Chair Car	
108	Other Passenger Train	
109	Milk	
110	Switching	26,425.00
113	Water Transfers	
132	Hotel and Restaurant	
133	Station, Train and Boat Privileges	(23.00)
135	Storage - Freight	
137	Demurrage	(5,939.00)
138	Communication	
139	Grain Elevator	
141	Power	
142	Rents of Buildings and Other Property	2,951.00
143	Miscellaneous	(602.00)
151	Joint Facility - Cr.	120,258.00
152	Joint Facility - Dr.	
	TOTAL RAILWAY OPERATING REVENUES	$242,675.00

*Revenue from dock coal from Wisconsin ports to Wisconsin points - included in Acct. 101 - None
excluded from Acct. 101 - None
Revenue from iron ore from Wisconsin points to Wisconsin docks - included in Acct. 101 - None
excluded from Acct. 101 - None

VERIFICATION

State of MINNESOTA)
) SS.
County of RAMSEY)

R. F. Garland makes oath and says that he is Assistant Vice President (Title of Officer) of Burlington Northern Inc. (Name of Reporting Company), that he has carefully examined the above statement and that the same is a correct and complete statement of the gross operating revenues derived from intrastate operations in the State of Wisconsin for the calendar year 1975.

BURLINGTON NORTHERN INC.

R F Garland
(Signature of Officer) Asst. Vice President

Subscribed and sworn before me, a Notary Public, in and for State and County above named, this 15th day of March, 1976.

My Commission Expires Jan 4 1983.

(Signature of Officer Authorized to Administer Oaths)

ROBERT A. MOLITOR
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Comm. Expires Jan. 13, 1983

REPORT TO THE PUBLIC SERVICE COMMISSION OF WISCONSIN
BY THE CHESAPEAKE AND OHIO RAILWAY COMPANY

OF

ITS GROSS OPERATING REVENUES DERIVED FROM INTRASTATE OPERATIONS IN THE STATE OF WISCONSIN FOR THE CALENDAR YEAR 1975

Acct. No.	Class of Operating Revenue	Amount
101*	Freight	
102	Passenger	
103	Baggage	
104	Sleeping Car	
105	Parlor and Chair Car	
108	Other Passenger Train	
109	Milk	
110	Switching	
113	Water Transfers	
132	Hotel and Restaurant	
133	Station, Train and Boat Privileges	
135	Storage - Freight	
137	Demurrage	
138	Communication	
139	Grain Elevator	
141	Power	
142	Rents of Buildings and Other Property	1,169
143	Miscellaneous	
151	Joint Facility - Cr.	
152	Joint Facility - Dr.	
	TOTAL RAILWAY OPERATING REVENUES	1,169

*Revenue from dock coal from Wisconsin ports to Wisconsin points - included in Acct. 101 - 0
excluded from Acct. 101 - 0
Revenue from iron ore from Wisconsin points to Wisconsin docks - included in Acct. 101 - 0
excluded from Acct. 101 - 0

VERIFICATION

State of)
) SS.
County of)

B. G. Lawler makes oath and says that he is Asst. V.P. & Comptroller (Title of Officer) of Chessie System (Name of Reporting Company), that he has carefully examined the above statement and that the same is a correct and complete statement of the gross operating revenues derived from intrastate operations in the State of Wisconsin for the calendar year 19__.

B G Lawler
(Signature of Officer)

Subscribed and sworn before me, a Notary Public, in and for State and County above named, this 25 day of February, 1976.

My Commission Expires [illegible].

(Signature of Officer Authorized to Administer Oaths)

REPORT TO THE PUBLIC SERVICE COMMISSION OF WISCONSIN
BY THE CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY

OF

ITS GROSS OPERATING REVENUES DERIVED FROM INTRASTATE OPERATIONS IN THE STATE OF WISCONSIN FOR THE CALENDAR YEAR 19 75

Acct. No.	Class of Operating Revenue	Amount
101*	Freight	$ 7,219,206
102	Passenger	-
103	Baggage	-
104	Sleeping Car	-
105	Parlor and Chair Car	-
108	Other Passenger Train	-
109	Milk	3,511,803
110	Switching	-
113	Water Transfers	-
132	Hotel and Restaurant	16,361
133	Station, Train and Boat Privileges	-
135	Storage - Freight	1,048,103
137	Demurrage	-
138	Communication	-
139	Grain Elevator	-
141	Power	42,267
142	Rents of Buildings and Other Property	607,522
143	Miscellaneous	32,733
151	Joint Facility - Cr.	-
152	Joint Facility - Dr.	-
	TOTAL RAILWAY OPERATING REVENUES	12,496,895
	*Revenue from dock coal from Wisconsin ports to Wisconsin points - included in Acct. 101	161,061
	excluded from Acct. 101	-
	Revenue from iron ore from Wisconsin points to Wisconsin docks - included in Acct. 101	-
	excluded from Acct. 101	-

VERIFICATION

State of ILLINOIS)
) SS.
County of COOK)

J. M. Butler makes oath and says that he is Vice President-Finance (Title of Officer) of Chicago and North Western Transportation Company (Name of Reporting Company), that he has carefully examined the above statement and that the same is a correct and complete statement of the gross operating revenues derived from intrastate operations in the State of Wisconsin for the calendar year 1975.

J M Butler
(Signature of Officer)

Subscribed and sworn before me, a Notary Public, in and for State and County above named, this 2nd day of April, 1976.
My Commission Expires May 21, 1978.

F J Brov
(Signature of Officer Authorized to Administer Oaths)

REPORT TO THE PUBLIC SERVICE COMMISSION OF WISCONSIN
BY THE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RR. CO.

OF

ITS GROSS OPERATING REVENUES DERIVED FROM INTRASTATE OPERATIONS IN THE STATE OF WISCONSIN FOR THE CALENDAR YEAR 1975

Acct. No.	Class of Operating Revenue	Amount
101*	Freight	$2,511,599
102	Passenger	-
103	Baggage	-
104	Sleeping Car	-
105	Parlor and Chair Car	-
108	Other Passenger Train	-
109	Milk	1,149,256
110	Switching	-
113	Water Transfers	-
132	Hotel and Restaurant	959
133	Station, Train and Boat Privileges	1,377
135	Storage - Freight	1,256,592
137	Demurrage	864
138	Communication	-
139	Grain Elevator	-
141	Power	114,601
142	Rents of Buildings and Other Property	87,795
143	Miscellaneous	40
151	Joint Facility - Cr.	-
152	Joint Facility - Dr.	-
	TOTAL RAILWAY OPERATING REVENUES	$5,002,471
	*Revenue from dock coal from Wisconsin ports to Wisconsin points - included in Acct. 101	$ 13,931
	excluded from Acct. 101	-
	Revenue from iron ore from Wisconsin points to Wisconsin docks - included in Acct. 101	-
	excluded from Acct. 101	-

VERIFICATION

State of ILLINOIS)
) SS.
County of COOK)

R. F. Kratochwill makes oath and says that he is Vice President (Title of Officer) of CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY (Name of Reporting Company), that he has carefully examined the above statement and that the same is a correct and complete statement of the gross operating revenues derived from intrastate operations in the State of Wisconsin for the calendar year 1975.

L. F. Kratochwill
(Signature of Officer)

Subscribed and sworn before me, a Notary Public, in and for State and County above named, this 23rd day of March, 1976.
My Commission Expires April 23, 1979.

F. X. O'Brien
(Signature of Officer Authorized to Administer Oaths)

REPORT TO THE PUBLIC SERVICE COMMISSION OF WISCONSIN
BY THE Duluth, Missabe & Iron Range Railway Company

OF

ITS GROSS OPERATING REVENUE DERIVED FROM INTRASTATE OPERATIONS IN THE STATE OF WISCONSIN FOR THE CALENDAR YEAR 19 75

Acct. No.	Class of Operating Revenue	Amount
101*	Freight	4,640
102	Passenger	
103	Baggage	
104	Sleeping Car	
105	Parlor and Chair Car	
108	Other Passenger Train	
109	Milk	
110	Switching	
113	Water Transfers	
132	Hotel and Restaurant	
133	Station, Train and Boat Privileges	
135	Storage - Freight	0
137	Demurrage	
138	Communication	
139	Grain Elevator	
141	Power	
142	Rents of Buildings and Other Property	
143	Miscellaneous	
151	Joint Facility - Cr.	
152	Joint Facility - Dr.	
	TOTAL RAILWAY OPERATING REVENUES	4,640

*Revenue from dock coal from Wisconsin ports to
Wisconsin points - included in Acct. 101 - - - - -
excluded from Acct. 101 - - - -
Revenue from iron ore from Wisconsin points to
Wisconsin docks - included in Acct. 101 - - - - -
excluded from Acct. 101 - - - -

VERIFICATION

State of Minnesota)
) SS.
County of St. Louis)

E. F. Watton makes oath and says that he is Assistant Comptroller (Title of Officer) of Duluth, Missabe and Iron Range Railway Company (Name of Reporting Company), that he has carefully examined the above statement and that the same is a correct and complete statement of the gross operating revenues derived from intrastate operations in the State of Wisconsin for the calendar year 19 75.

(Signature of Officer)

Subscribed and sworn before me, a _____, in and for State and County above named, this _____ day of _____, 19 .
My Commission Expires _____.

(Signature of Officer Authorized to Administer Oaths)

REPORT TO THE PUBLIC SERVICE COMMISSION OF WISCONSIN
BY THE GRAND TRUNK WESTERN RAILROAD COMPANY

OF

ITS GROSS OPERATING REVENUE DERIVED FROM INTRASTATE OPERATIONS IN THE STATE OF WISCONSIN FOR THE CALENDAR YEAR 19 75

Acct. No.	Class of Operating Revenue	Amount
101*	Freight	
102	Passenger	
103	Baggage	
104	Sleeping Car	
105	Parlor and Chair Car	
108	Other Passenger Train	
109	Milk	101.00
110	Switching	
113	Water Transfers	
132	Hotel and Restaurant	
133	Station, Train and Boat Privileges	
135	Storage - Freight	
137	Demurrage	
138	Communication	
139	Grain Elevator	
141	Power	1,900.00
142	Rents of Buildings and Other Property	2,888.00
143	Miscellaneous	
151	Joint Facility - Cr.	
152	Joint Facility - Dr.	
	TOTAL RAILWAY OPERATING REVENUES	4,891.00

*Revenue from dock coal from Wisconsin ports to
Wisconsin points - included in Acct. 101 - - - - -
excluded from Acct. 101 - - - -
Revenue from iron ore from Wisconsin points to
Wisconsin docks - included in Acct. 101 - - - - -
excluded from Acct. 101 - - - -

VERIFICATION

State of MICHIGAN)
) SS.
County of WAYNE)

R. L. Ritchie makes oath and says that he is Treasurer (Title of Officer) of Grand Trunk Western Railroad Company (Name of Reporting Company), that he has carefully examined the above statement and that the same is a correct and complete statement of the gross operating revenues derived from intrastate operations in the State of Wisconsin for the calendar year 19 75.

(Signature of Officer)

Subscribed and sworn before me, a NOTARY PUBLIC, in and for State and County above named, this 23rd day of March, 19 76.
My Commission Expires June 1, 1980.

(Signature of Officer Authorized to Administer Oaths)

8A

REPORT TO THE PUBLIC SERVICE COMMISSION OF WISCONSIN
BY THE Green Bay and Western Railroad Company

OF

ITS GROSS OPERATING REVENUES DERIVED FROM INTRASTATE OPERATIONS IN THE STATE OF WISCONSIN FOR THE CALENDAR YEAR 1975

Acct. No.	Class of Operating Revenue	Amount
101*	Freight	$ 432,356.
102	Passenger	
103	Baggage	
104	Sleeping Car	
105	Parlor and Chair Car	
108	Other Passenger Train	
109	Milk	
110	Switching	26,939.
113	Water Transfers	
132	Hotel and Restaurant	
133	Station, Train and Boat Privileges	209.
135	Storage - Freight	
137	Demurrage	95,200.
138	Communication	
139	Grain Elevator	
141	Power	
142	Rents of Buildings and Other Property	
143	Miscellaneous	7,776.
151	Joint Facility - Cr.	
152	Joint Facility - Dr.	167.
	TOTAL RAILWAY OPERATING REVENUES	562,493. ✓
	*Revenue from dock coal from Wisconsin ports to Wisconsin points - included in Acct. 101	33,906.
	excluded from Acct. 101	
	Revenue from iron ore from Wisconsin points to Wisconsin docks - included in Acct. 101	
	excluded from Acct. 101	

VERIFICATION

State of Wisconsin)
) SS.
County of Brown)

O. Lloyd Olsen makes oath and says that he is General Auditor (Title of Officer) of Green Bay and Western Railroad Co. (Name of Reporting Company), that he has carefully examined the above statement and that the same is a correct and complete statement of the gross operating revenues derived from intrastate operations in the State of Wisconsin for the calendar year 1975.

[illegible]
(Signature of Officer)

Subscribed and sworn before me, a [illegible] in and for State and County above named, this [illegible] day of [illegible], 1976.
Robert L. Coolin
My Commission Expires [illegible]
My Comm[illegible]

Robert L. [illegible]
(Signature of Officer Authorized to administer oaths)

9A

REPORT TO THE PUBLIC SERVICE COMMISSION OF WISCONSIN
BY THE Illinois Central Gulf R.R. Co.

OF

ITS GROSS OPERATING REVENUES DERIVED FROM INTRASTATE OPERATIONS IN THE STATE OF WISCONSIN FOR THE CALENDAR YEAR 1975
(In Thousands)

Acct. No.	Class of Operating Revenue	Amount
101*	Freight	2
102	Passenger	
103	Baggage	
104	Sleeping Car	
105	Parlor and Chair Car	
108	Other Passenger Train	
109	Milk	
110	Switching	
113	Water Transfers	
132	Hotel and Restaurant	
133	Station, Train and Boat Privileges	
135	Storage - Freight	
137	Demurrage	
138	Communication	
139	Grain Elevator	
141	Power	
142	Rents of Buildings and Other Property	1
143	Miscellaneous	
151	Joint Facility - Cr.	
152	Joint Facility - Dr.	
	TOTAL RAILWAY OPERATING REVENUES	3 ✓
	*Revenue from dock coal from Wisconsin ports to Wisconsin points - included in Acct. 101	-
	excluded from Acct. 101	-
	Revenue from iron ore from Wisconsin points to Wisconsin docks - included in Acct. 101	-
	excluded from Acct. 101	-

VERIFICATION

State of Illinois)
) SS.
County of Cook)

Don R. Montgomery makes oath and says that he is Controller (Title of Officer) of Illinois Central Gulf Railroad Company (Name of Reporting Company), that he has carefully examined the above statement and that the same is a correct and complete statement of the gross operating revenues derived from intrastate operations in the State of Wisconsin for the calendar year 1975.

[illegible]
(Signature of Officer)

Subscribed and sworn before me, a Notary Public in and for State and County above named, this 12th day of [illegible], 1976.
My Commission Expires [illegible] 1976.

John E. [illegible]
(Signature of Officer Authorized to administer oaths)

10A

REPORT TO THE PUBLIC SERVICE COMMISSION OF WISCONSIN
BY THE SOO LINE RAILROAD COMPANY

OF

ITS GROSS OPERATING REVENUES DERIVED FROM INTRASTATE OPERATIONS IN THE STATE OF WISCONSIN FOR THE CALENDAR YEAR 1975

Acct. No.	Class of Operating Revenue	Amount
101*	Freight	$ 4 438 973
102	Passenger	
103	Baggage	
104	Sleeping Car	
105	Parlor and Chair Car	
108	Other Passenger Train	
109	Milk	
110	Switching	435 635
113	Water Transfers	
132	Hotel and Restaurant	
133	Station, Train and Boat Privileges	24
135	Storage - Freight	
137	Demurrage	596 495
138	Communication	
139	Grain Elevator	
141	Power	
142	Rents of Buildings and Other Property	26 392
143	Miscellaneous	56 033
151	Joint Facility - Cr.	82 837
152	Joint Facility - Dr.	
	TOTAL RAILWAY OPERATING REVENUES	$ 5 636 298

*Revenue from dock coal from Wisconsin ports to
Wisconsin points - included in Acct. 101 - - - - - $ 211 656
excluded from Acct. 101 - - - -
Revenue from iron ore from Wisconsin points to
Wisconsin docks - included in Acct. 101 - - - - -
excluded from Acct. 101 - - - -

VERIFICATION

State of Minnesota)
) SS.
County of Hennepin)

R. L. Murlowski makes oath and says that he is Vice President - Accounting (Title of Officer) of Soo Line Railroad Company (Name of Reporting Company), that he has carefully examined the above statement and that the same is a correct and complete statement of the gross operating revenues derived from intrastate operations in the State of Wisconsin for the calendar year 1975.

R L Murlowski
(Signature of Officer)

Subscribed and sworn before me, a Notary Public, in and for State and County above named, this 31st day of March, 1976.
My Commission Expires December 13, 1978.

Edward H Erkins
(Signature of Officer Authorized to Administer Oaths)

APPENDIX B

Monthly Economic Letter

APRIL 1977

CITIBANK

Can Carter cure tunnel vision?

The arrival of spring has warmed up the economy and there's good news on most fronts. But there's still a chill in the financial markets, where inflation fears have investors hunkered down.

What's most newsworthy about the economic numbers released in March is not that the economy is snapping back strongly from the temporary dislocations caused earlier by the cold weather. That had been widely forecast. But what wasn't anticipated was the way stock market investors would so thoroughly discount the data to focus instead on widespread fears that the rate of inflation would rise significantly in the longer run.

In this respect, market participants were behaving in a way much akin to businessmen in the late 1960s. Then, forecasts of impending recession were frequently shrugged off with the comment that plans were based on the recovery confidently believed to lie beyond the valley of recession. Today's investors are apparently shrugging off mounting evidence of near-term strength in the real economy and worrying instead about the possible inflationary threat to continued growth in the longer run.

In this context, the job facing the Carter Administration is to shape its upcoming inflation and energy programs and, working with the Federal Reserve, its ongoing fiscal and monetary policies to reduce the threat of higher inflation rates in the future.

There seems to be little doubt that it is this concern that has cooled the ardor of investors. If anything, the economy's recovery from the disruptions associated with cold weather in late January and early February has been more vigorous than expected. Industrial production rose a full 1% in February, more than offsetting the January dip, while housing starts rebounded strongly on a seasonally adjusted basis, nearly regaining a December rate that was the highest of 1976. Retail sales rose a strong 1.8% according to preliminary estimates, making up a lot of the ground lost in January, and personal income also recorded a handsome gain after virtually standing still in January.

Inflation takes some of the luster out of the reported increases in sales and incomes, of course, but the outlook for the spring is bright enough to suggest that incomes and spending will run well ahead of inflation. As revised national income estimates

[PAGES OMITTED]

APPENDIX C

Net income of leading nonmanufacturing corporations for 1975 and 1976

(dollar figures in millions)

No. of cos.	Industry	Reported net income after taxes 1975	1976	Percent change	Net worth beginning of year 1976-a	Percent return on net worth 1975	1976	Percent change in sales-b	Percent margin on sales-c 1975	1976
14	Metal mining-d	$ 308.8	$ 383.8	24	$ 2,450.1	13.4	15.7	19	12.9	15.0
10	Other mining, quarrying-d	189.8	197.2	4	949.0	24.0	20.8	6	10.2	10.0
24	**Total mining-d**	**498.6**	**581.0**	**17**	**3,399.0**	**16.1**	**17.1**	**12**	**11.6**	**12.7**
52	Food chains	293.3	589.2	101	4,571.1	7.0	12.9	9	0.5	1.0
85	Variety chains	662.4	866.1	31	5,176.5	14.3	16.7	17	2.7	3.0
44	Department & specialty	696.3	839.3	21	5,844.4	13.4	14.4	12	2.8	3.1
5	Mail order	541.9	719.7	33	5,447.1	11.1	13.2	10	3.8	4.6
163	Wholesale & misc. retail	1,083.4	1,177.7	9	7,427.9	17.1	15.9	11	2.6	2.5
349	**Total trade**	**3,277.3**	**4,192.0**	**28**	**28,467.0**	**13.0**	**14.7**	**11**	**2.0**	**2.3**
52	Class I railroads-e,f	107.9	272.5	153	14,841.3	0.7	1.8	13	0.7	1.5
51	Common carrier trucking-e	270.1	340.1	26	2,294.3	12.7	14.8	18	3.3	3.6
29	Air transport-e	D-52.0	539.9	NM	4,133.8	NM	13.1	14	NM	3.0
24	Shipping & other transportation-e	339.6	426.3	26	2,228.0	16.9	19.1	5	4.7	5.7
156	**Total transportation-e**	**665.7**	**1,578.8**	**137**	**23,497.4**	**2.8**	**6.7**	**13**	**1.4**	**2.9**
178	Electric power & gas-e	7,331.7	8,442.5	15	71,409.5	11.6	11.8	16	10.0	9.9
31	Telephone & communications-e	4,249.0	5,255.0	24	45,112.5	10.0	11.6	14	9.7	10.6
209	**Total public utilities-e**	**11,580.7**	**13,697.5**	**18**	**116,522.1**	**11.0**	**11.8**	**15**	**9.9**	**10.2**
31	Amusements	252.2	248.2	2	1,700.5	17.2	14.6	11	7.2	6.4
65	Restaurants & hotels	437.1	506.2	16	2,896.9	15.8	17.5	16	4.4	4.4
160	Other business services	448.4	705.6	57	4,313.3	11.2	16.4	18	3.8	4.9
37	Construction	455.8	569.6	25	2,962.1	17.8	19.2	9	3.8	4.3
293	**Total services**	**1,593.5**	**2,029.6**	**27**	**11,872.8**	**15.0**	**17.1**	**14**	**4.3**	**4.7**
2,921	**Total nonfinancial**	**59,349.0**	**75,894.7**	**28**	**541,911.5**	**11.9**	**14.0**	**13**	**4.5**	**5.1**
186	Commercial banks & holding cos.	3,801.7	4,111.8	8	34,959.9	11.8	11.8			
909	Property & liability ins.-g	611.0	2,169.0	255	18,380.0	4.0	11.8			
143	Investment funds-h	1,139.0	1,226.8	8	27,933.5	4.9	4.4			
26	Sales finance	339.4	422.4	24	3,515.5	10.2	12.0			
83	Real estate	D-240.3	33.2	NM	2,749.9	NM	1.2			
21	Miscellaneous finance-i	450.6	590.8	31	3,824.5	12.9	15.4			
1,368	**Total financial**	**6,101.4**	**8,554.0**	**40**	**91,363.0**	**7.6**	**9.4**			
4,289	**Grand total (incl. manufacturing)**	**$65,450.3**	**$84,448.7**	**29**	**$633,274.5**	**11.3**	**13.3**			

NM—Not meaningful D—Deficit

(a) Net worth is equivalent to shareholders' equity or "book net assets" or capital and surplus. (b) Less than 1% of nonfinancial firms with 0.3% of the income did not report sales or revenues. "Sales" include income from investments and other sources as well as from sales. (c) Profit margins are computed for all companies publishing sales or gross revenue figures. (d) Net income is reported before depletion charges in some cases. (e) Due to the large proportion of capital investment in the form of funded debt, rate of return on total property investment would be lower than that shown on net worth only. (f) Association of American Railroads tabulation. (g) Estimated by A. M. Best Co. for all stock companies on an adjusted basis. (h) Income in most cases excludes capital gains or losses on investments. (i) Includes brokerage firms, savings and loan companies, etc.

TEXT OF STATUTES

CHAPTER 29, LAWS OF 1977

* * *

SECTION 1487h. 348.07 (2) (g) of the statutes is created to read:

348.07 (2) (g) 59 feet for a combination of a truck tractor and a semitrailer providing the cargo or cargo space of the semitrailer is 45 feet or less in length and the truck tractor is within the statutory limit in sub. (1).

* * *

SECTION 1487s. 348.15 (3) (d) of the statutes is repealed and recreated to read:

348.15 (3) (d) The gross weight imposed on the highway by all axles of a vehicle or combination of vehicles exceeds 73,000 pounds provided that such overall gross weight may exceed 73,000 pounds but not more than 80,000 pounds and between 73,000 and 80,000 pounds, the gross weight shall be determined by application of the following formula: W equals 500 multiplied by (LN/N-1 plus 12N plus 36) where W equals the overall gross weight on any group of 2 or more consecutive axles to the nearest 500 pounds, L equals the distance in feet between the extreme of any group of 2 or more consecutive axles and N equals the number of axles in group under consideration, except that 2 consecutive sets of tandem axles may carry a gross load of 34,000 pounds each provided the overall distance between the first and last axles of such consecutive sets of tandem axles is 36 feet or more.

SECTION 1487t. 348.20 (3) of the statutes is repealed.

* * *